UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

ARMCO MASONRY, Sole Proprietorship

Employer

and

Case 7-RC-22622

INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 9 MICHIGAN, AFL-CIO[1]

Petitioner

APPEARANCES:

Peter J. Quist, Attorney, of Burlington, Vermont, for the Employer
John Adam, Attorney, of Royal Oak, Michigan, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[2] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees

[1] The name of the Petitioner appears as amended at hearing.
[2] The Employer did not appear at the hearing, but did file a brief. The Petitioner did not file a brief.

of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Employer is a sole proprietorship engaged in the building and construction industry as a masonry contractor throughout the United States from its facility located in Spokane, Missouri. The Petitioner seeks to represent a unit of all full-time and regular part-time bricklayers employed by the Employer; but excluding office clerical employees, operators, carpenters, laborers, managers, and guards and supervisors as defined in the Act. The Employer raises three issues. First, it contends that the Petitioner, at the hearing, sought to amend its petition to include a larger unit without making a formal motion to amend the petition, or without substituting another petition for it. Second, it argues that, in seeking a larger unit, the Petitioner presented no testimony regarding the Employer's current work or the number of bricklayers employed nationwide by the Employer, and did not demonstrate the requisite showing of interest to proceed to an election in the larger unit. Third, the Employer asserts that the Petitioner did not meet its burden of establishing that there is a sufficient community of interest among all of the Employer's bricklayers to justify an employerwide unit.

I find that the petitioned-for employerwide unit is appropriate. As to the Employer's contentions, I find that the Petitioner did not seek to amend its petition to include a larger unit, does have a sufficient showing of interest, and met any burden regarding the appropriateness of the petitioned-for unit.

Amendment of Petition

The petition filed by Petitioner seeks "all full-time and regular part-time bricklayers." At the hearing, the Petitioner clearly stated that it was seeking to represent all bricklayers employed by the Employer wherever it performs work. The Petitioner represented that in pre-hearing discussions, the Employer wanted to limit the unit to jobsites within Michigan, but the Petitioner was not seeking any geographical limitation. In fact, that was the issue that precluded reaching a stipulated election agreement. Thus, the Employer is incorrect in its contention that the Petitioner has sought to amend its petition.

Showing of Interest

Based upon the number of employees listed as being in the bargaining unit by the Petitioner in its petition, it was administratively determined that the Petitioner provided a sufficient showing of interest. In the Region's initial letter to the Employer providing it with a copy of the petition, the Region requested that the Employer provide an

alphabetized list of the names and job classifications of the employees in the alleged appropriate unit for the payroll period immediately preceding the date of the letter. The Employer did not provide the requested, or any other, list of its employees.

The Board has long held that the showing of interest is a matter for administrative determination and is not litigable by the parties. ***Perdue Farms, Inc.***, 328 NLRB 909, 911 (1999) and cases cited. Inasmuch as I have found that the Petitioner has not amended its petition to seek a larger unit and the Employer did not provide the Region with a list of its employees, the Region's earlier administrative determination that the Petitioner has a sufficient showing of interest is affirmed.

Appropriate Unit

It is well settled that a petitioned-for employerwide bargaining unit is presumptively appropriate. ***Hazard Express, Inc.***, 324 NLRB 989 (1997), citing ***Jackson's Liquors***, 208 NLRB 807 (1974). Thus, the Employer is incorrect that the Petitioner has the burden to establish that an employerwide unit is appropriate. In that regard, the cases cited by the Employer all involved unions seeking to carve out an inappropriate grouping of employees.

The Petitioner presented evidence that the Employer currently employs approximately eight or nine bricklayers at a Wal-Mart's Sam's Club construction jobsite in Ypsilanti, Michigan. Of those, the Petitioner indicated three or four are a core group of employees who earlier had performed work at jobsites in Wichita, Kansas and Kansas City, Missouri. According to the Petitioner, the Employer also employs eight or nine laborers and two superintendents at the Ypsilanti jobsite, and the superintendents came from the out-of-state jobsites. While the record is devoid of much evidence regarding the Employer's operations, the Employer did not attend the hearing and, as a result, presented no evidence to overcome the presumption that the employerwide unit is appropriate.[3]

5. Based on the foregoing and the record as a whole, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

[3] The Employer's out-of-state attorney was under the impression that an election agreement could be obtained on the day prior to the hearing. When it was not, neither he nor the Employer attended the hearing.

All full-time and regular part-time bricklayers employed by the Employer working at or out of its facility in Spokane, Missouri; but excluding office clerical employees, operators, carpenters, laborers, managerial employees, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.[4]

Dated at Detroit, Michigan, this 15th day of March 2004.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

Classifications

324-2000-0000-0000
440-3350-0000-0000

[4] The Petitioner requests that the construction industry eligibility formula set forth in ***Daniel Construction Co.***, 133 NLRB 264 (1961) as modified in 167 NLRB 1078 (1967) and ***Steiny & Co.***, 308 NLRB 1323 (1992) be used in this case. Absent a stipulation not to use the ***Daniels/Steiny*** eligibility formula, the formula applies to all construction industry elections. ***Signet Testing Laboratories***, 330 NLRB 1 (1999), citing ***Steiny & Co.*** Thus, the ***Daniels/Steiny*** eligibility formula will apply, as noted in the attached Direction of Election.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees who have been employed for 30 working days or more within the 12 months preceding the eligibility date or if they have had some employment in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Ineligible are those employees who had been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

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LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Company***, 394 U.S. 759 (1969); ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile

transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **March 22, 2004.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570.** This request must be received by the Board in Washington by**, March 29, 2004**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be stopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.